

EXHIBIT J

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Croatia: still in transition

Legal system: Civil law, mostly inquisitorial, prosecution part of judiciary
Judges per 100,000 people: 43.7¹
Judge's salary at start of career: US \$29,651² *Supreme Court judge's salary:* US \$67,330³
GNI per capita: US \$8,060⁴ *Annual budget of judiciary:* US \$345.1 million⁵
Total annual budget: US \$16.4 billion⁶ *Percentage of annual budget:* 2.2
Are all court decisions open to appeal up to the highest level? Yes
Institution in charge of disciplinary and administrative oversight: Not independent
Are all rulings publicised? Yes *Code of conduct for judges:* In drafting process

1 Justice Ministry (2006) 2 Ibid. 3 Ibid. 4 World Bank Development Indicators (2005) 5 Official Gazette no. 148 (2005) 6 Ibid.

The legacy of the communist era and numerous unsuccessful reforms during the 1990s continue to weigh heavily on Croatia's judiciary. When it was still part of the Socialist Federal Republic of Yugoslavia, the Croatian judicial system was politicised to a large degree. Many dissidents were tried and convicted in processes that were politically motivated.¹ At the same time, white-collar crimes were rarely prosecuted because company directors and chief executives belonged to the country's ruling party and were thus protected by their colleagues.

In the early 1990s the political system changed and the Croatian Democratic Union won free elections by a large majority. The new government introduced changes to all aspects of life, including the judiciary. Many judges left for higher wages in private practice or business, or because they were out of favour with the new regime. Courts struggled to function during the

four-year Homeland War (1991–95) and the backlog of cases grew. Bribe paying, with the goal of pushing cases through the sluggish court system, was common though it is difficult to state whether or not judicial corruption worsened in this period since there had been no surveys during the communist period, or indeed a free press or political opposition to shed any light on it.

These elements fuelled the current situation in which the judicial system lacks transparency and incidents of corruption still occur. In March 2006 parliament adopted a National Programme for Curbing Corruption that stated that the government was aware of the scale of corruption and considered it a decisive factor in influencing Croatia's accession to the EU. The EU Commission cited poor judicial performance as one of the bigger obstacles to faster accession and the November 2005 progress report called corruption a serious threat to society. The Commission

1 Vlado Gotovac, one of Croatia's most famous dissidents, was sentenced in 1981 to two years in prison (his second spell in jail) and was forbidden to appear in public because he had given foreign journalists an interview.

advised Croatia to set up internal controls in every area of administration to investigate corruption, based on accountable and transparent rules.

The nature and scale of the problem

Public opinion surveys suggest that Croatians regard the judiciary as one of the most corrupt sectors in the country. Surveys by TI Croatia also indicate a perception of high levels of corruption in the judiciary. In a survey in 2003, 80 per cent of respondents answered positively when asked: 'Do you think corruption is widespread in the judiciary?'²

Occasional cases uncovered by the media or civil society give some sense of the nature of judicial corruption. In September 2006 the Office for Corruption and Organised Crime (USKOK) filed charges of bribe taking, fraud and abuse of office against Zvonimir Josipovic, a former president and judge of the municipal court of Gvozd. He was indicted for exacting bribes worth up to US \$4,000 from litigants to 'speed up' court processes. An investigation into his affairs began in 2005 when his assets were found to amount to HRK1.4 million (US \$240,000).³

Another measure of judicial corruption is the database of complaints compiled by the Advocacy and Legal Advice Centre (ALAC), established by TI Croatia in 2004 as a service for citizens who have been directly affected by corruption. By the end of June 2006, half of all complaints submitted related to alleged judicial corruption. Most related to sentences the complainant considered surprising or illogical. Another common cause for complaint was that the judge had failed to open a case until the statute of limitation had expired without justification or explanation.

The Association of Croatian Judges acknowledges a degree of corruption among its membership but is careful to delimit what is understood as corruption. 'Wrong decisions', said the chair, Djuro Sessa, 'are corrected by higher courts and a wrong decision does not mean corruption.'⁴

At this writing only one judge has been convicted for corruption. Juraj Boljkovac was sentenced to three and a half years in prison for taking a €15,000 (US \$19,000) bribe to arrange the release of a person in custody.⁵ The case against Boljkovac began in June 2002 and lasted more than three years. According to the state judicial council (SJC), the body that appoints and supervises judges, five other members of the judiciary were under investigation for corruption in mid-2006.

The delay in dealing with alleged corruption by judges is in keeping with lethargy across the judicial sector. The number of unresolved cases has remained at over one million for many years and is only beginning to fall. According to Justice Ministry statistics there were 1.5 million unresolved cases in 2005.⁶ A majority of these were criminal and stagnated at the lowest court level, the municipal courts. One reason for the high number was the rapid turnover of judges in the early 1990s and their replacement by less experienced practitioners.

A number of recent allegations involve bankruptcy proceedings. In February 2006 the state attorney's office accused several judges in the high commercial court in Zagreb of embezzlement, but the indictments were quashed after the SJC rejected a request to lift their immunity. As the scandal unfolded newspapers reported on unusual decisions by the high commercial court, such as a decision to borrow money from companies

² 'Questionnaire on Public Opinion on Corruption' (Zagreb: TI-Croatia, 2003).

³ Hrvatska radiotelevizija (Croatia), 27 September 2006. Available at vijesti.hrt.hr/ShowArticles.aspx?ArticleId=15242

⁴ Press release of Association of Croatian Judges, 3 March 2006.

⁵ Radio Free Europe/Radio Liberty, 23 September 2003.

⁶ Statistical Overview (Zagreb: Ministry of Justice, 2006).

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involved in bankruptcy proceedings.⁷ In the case of the Zagreb-based company Derma, the company lent K3.5 million (US \$600,000) to the high commercial court for the renovation of the court house, even as it was fighting bankruptcy proceedings. When the proceedings, which began in 1992, were finally resolved in 2001, the court's debt was mysteriously written off.⁸ Other allegations involving bankruptcy include suspected collusion between judges and administrators at the expense of creditors and debtors.

Attempts to curb judicial corruption

The authorities have tried to improve the judicial system since Croatia won independence, with an initial emphasis on ridding courts of political appointees. But political interference in the appointments process continues due to poor execution. The creation of the SJC to decide appointments and discipline judges and state attorneys was severely flawed. A first mistake was the delay in the body's creation. Secondary legislation regulating the SJC was approved in June 1993 but not implemented until November 1994, meaning vacancies lay unfilled for more than a year. More critical was the process of selection of members. The law states that nominations to the 15-member body are to be made by the Supreme Court, Justice Minister, chief state attorney, Croatian Bar Association and law schools. Each made their nominations, but most were rejected; the chief state attorney nominated 13 of the final 15. The SJC has been criticised for appointing judges according to political loyalty.

Another reform introduced allows judges to keep their positions until retirement, following a five-year probation period, rather than sit exams every three years as was the case prior to 1996. This has not had an impact on the case

backlog or increased judges' efficiency, but it may have eliminated an avenue for corruption by judges who failed the exam.

More recently the Justice Ministry introduced a digitalised land registry in 2005, which increased public access to records and removed a source of potential corruption.⁹

The 2006 National Programme for Curbing Corruption includes chapters on the judiciary, health, local government, politics and public administration, economy and science, education and sport. With regard to the judiciary, the programme outlines a number of measures mainly aimed at increasing transparency and efficiency, for example by publishing all verdicts and schedules so the public can see the criteria used for allocating judges to particular cases. Another requirement is that judges and state attorneys must declare their assets. The programme calls for a thorough diagnosis of corruption problems, mechanisms to control the advancement of judges and continuous ethics training for everyone involved in the judicial system.

Conclusions

It is impossible to measure precisely the level of judicial corruption in Croatia, but enough is known to be able to make decisions about what tools might eliminate the systemic deficiencies that encourage the phenomenon. Representatives of the judiciary deny there is corruption in the system and cite statistics that support their claim: since the early 1990s only one judge has been sentenced for committing a corrupt offence. Nevertheless, the public is frequently surprised by sentencing that cannot easily be explained unless corruption had been an influence.

⁷ *Nacional* (Croatia), 27 February 2006.

⁸ *Slobodna Dalmacija* (Croatia), 1 April 2006.

⁹ See *Global Corruption Report 2006*.